



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

COVID-19 Response:
Northern Ireland Courts and
Tribunals Service

28 May 2020

The Courts and Tribunals Service has been making greater use of new videoconferencing technology in order to facilitate virtual hearings in place of traditional face-to-face hearings. Virtual hearings have become standard across all court hubs and are being used in new areas of court business, such as first appearance from PSNI custody suites and applications for non-molestation orders. Building on those early foundations, the Lord Chief Justice has held a series of meetings with key stakeholders on criminal, civil and family justice matters. The latest guidance, which was issued on 12 May, moved the position from one of dealing with urgent or agreed matters to one where there is more proactive handling by judges, with administrative reviews to inform case progression and listing for hearing.

The Court of Appeal has completed its initial review, and several cases have been listed for a physical hearing planned on 1 June. That hearing is being used as a proof of concept for what a socially distanced court will look like, together with a range of supporting procedures and measures to ensure that we provide a safe environment for all court users. Judicially led administrative reviews of all Crown Court business is under way in order to identify cases that can be effectively progressed through various stages from arraignment to sentence. Adult Magistrates' and Youth Courts' business is extended to include committal proceedings and sentencing, and the presiding district judge is developing a pilot sentencing court in Belfast that will test the effectiveness of brigading business by solicitor to increase throughput.

Given the particular challenge of managing jurors in the current circumstances, the Lord Chief Justice has asked us to develop arrangements to support the delivery of a physically distanced jury trial. That work encapsulates not just the physical changes that are required in the courtroom but the scrutiny and re-engineering of the entire process from the point when potential jurors are called through to their discharge at the end of the trial. We aim to present proposals to the Lord Chief Justice and other stakeholders in June.

I know that family business was raised by a number of members. Judicially led reviews are under way in family care centre County Court cases and are listed for the week commencing 8 June. Part of that process will encourage parties to lodge reports and other documentation electronically, which can then be shared securely and reduce the reliance on hard copy files. In addition, it is intended to pilot family proceedings courts, which are at the Magistrates' Court level, in Lisburn and Ards. That will allow us to test capacity to manage full family court lists through a blend of judicial direction and virtual hearings. Finally, in relation to family business, the presiding County Court judge is piloting a virtual court to deal with undefended divorces in Belfast with a view to extending it to all areas from mid-June.

There is no doubt that getting back to a new normal for the Courts and Tribunals Service will be challenging. The traditional model for courts cannot be used under the current circumstances, and, until social-distancing measures are significantly relaxed, physical attendances should be used where there is no practical alternative. We will continue to grow our virtual court capacity. However, we recognise that virtual technology will have some limitations, which have been highlighted by recent evaluations in England and Wales, including slower throughput, the need for regular breaks and not being suitable for particular types of court proceedings.

Physical court hearings will always be necessary, and we are working to modify the court estate to accommodate that. The early indications are of a substantially reduced capacity, with some venues potentially being unsuitable. Tribunals are on a largely similar trajectory to the courts. Having initially scaled back to essential business only, they are now working to identify cases that can be delivered remotely through a mixture of video, telephone and paper-based hearings. The appeals tribunal, which deals with benefits appeals, issued 2,400 letters to appellants, offering remote hearings. Staff are now working with the president to list those cases that can proceed.

Finally, at a previous briefing, I advised the Committee that the Courts and Tribunals Service was working to establish the Historical Institutional Abuse Redress Board. That important new service opened to receive applications on 31 March and, notwithstanding the lockdown restrictions, redress board panels have convened virtually to consider and assess completed applications for compensation.

The Chairperson (Mr Givan): Peter, thank you very much. Paul Frew, you indicated that you have a question.

Mr Frew: Yes, thank you, Chair. Peter, thank you very much for your attendance and your statement. It is very helpful. My first question is this: what venues do you deem unsuitable?

Mr Luney: I do not know that I could give a definitive answer about any of them. We are arranging for all venues to be surveyed, but while there is a requirement for social distancing to be in place, it is conceivable that some of those smaller venues, which maybe have only one courtroom and maybe have very narrow waiting facilities, may not be particularly suitable for the likes of family business or other closed courts where everybody other than the parties in the case that is being heard need to wait outside. I think that some of the waiting areas at our smaller courts are so small that they genuinely would not be able to accommodate a socially distanced audience.

Mr Frew: The social-distancing guidelines are 2 metres, and —

Mr Luney: Yes.

Mr Frew: — I guess — well, I know — from having been in a number of our courtrooms that they can be pokey and inadequate for waiting and for the likes of family business. Is that not the procedure that you are looking to monitor and adapt so that you could do away with some of those antiquated practices that were in place before this [*Inaudible*]?

Mr Luney: I think, Paul, that the future delivery model will undoubtedly have to be a blend of virtual hearings, physical hearings and the administrative management of cases.

I will give you a couple of practical examples of the work that we have been doing on social distancing. I mentioned that we have a case listed for a physical hearing next week in the High Court. We are using the Nisi Prius courtroom, which is the biggest courtroom in that building. Normally, that room is capable of accommodating around 70 people. To have it socially distanced and compliant with the 2-metre policy, its capacity reduces to 17.

That analysis is replicated when we look across the estate. We had plans developed for all the courtrooms in the Laganside Courts, and the reduction in capacity there is similarly marked. On average, the capacity of courtrooms would fall to about 30% of their normal capacity. That indicates the challenges of trying to manage business until social-distancing measures are relaxed somewhat.

It is also incumbent on us to make sure that we know how to use that capacity to best effect. If, for example, we know that a particular courtroom has a capacity of 20 people, we need to work with the judiciary, stakeholders, prosecution, defence and other parties to agree how to use it. Is it 20 people per hour, or is it 20 people per half hour? How do we brigade and structure business so that we have a flow coming through that is not presenting challenges in the ingress and egress of people from the building?

Mr Frew: Yes. Surely the ingress and egress of people is more to do with personal responsibility and, hopefully, under the tuition of solicitors, barristers and representatives that are conducting appeals. It strikes me that it is very important that the action of court and the law being conducted is symbolism as much practice. In the same way that I was dead against the Assembly not meeting, I was dead against courts not meeting for most business. The more that we can get cranked up, the better, and that includes family courts, because that is something that maybe comes to our constituency offices more than most court business. It seems to be the case that, in a small number of instances, people have used these restrictions as a weapon. That is turning the law on its head. There needs to be some action taken to instigate family courts. Having spoken to the Attorney General, I know that cases could still go on and develop, if suffering could be proved. The problem for solicitors, then, seems to be that suffering seems to be classed as abuse only, whereas some children's suffering can encapsulate a lot more [*Inaudible*] than physical abuse. To me, a massive issue is swelling up as an undercurrent in our society that will manifest itself pretty soon if we do not get back up and crank up into action.

Mr Luney: Hopefully, Paul, the initiatives on the family proceedings courts in Ards and Lisburn give you a sense that that increase in business will happen. The Chief Justice and the Ministers of Health and Justice have issued statements on the challenges of contact in family cases. There was an emphasis on the parties making arrangements between themselves, recognising the challenges of the coronavirus crisis and stressing the importance of working together in the best interests of the child.

I acknowledge, as you have said, that there will be instances where people have used that to their own ends. The guidance from the Chief Justice said that, where a case was subsequently listed for hearing — urgent cases can still be listed for hearing — and it is demonstrated to the court that one of the parties has acted in bad faith, the court will take that into consideration in making future decisions.

There was a focus on lost time with the parent being made up subsequently. I appreciate that the issue that you raise is a real one in the present time.

Mr Frew: My final point is on the issue of tribunals for appeals for personal independence payments and the employment and support allowance, whereby, people would be going into a venue, whether that be a boardroom or a courtroom. In Ballymena, they use courtroom 3, which is very adequate for that. It is more like a classroom, and there is space in the room. So, there are three people on the appeals panel, and the secretariat will be there, the principal, the appellant and their representatives. Surely, there should be social-distancing guidance issued that will be adequate to continue appeals. Whilst, at the minute, a raft of paper appeals is going in, the appeals panels themselves never like using paper appeals. They always want to see the principal and the appellant. That will hurt people gravely, with regard to decisions being delayed and the wrong decisions being made. The sooner that we get to physical appeals, the better. Even doing it through Zoom would still be better than a paper exercise. The panel would still get to see the appellant. Panel members would still get to see the whites of their eyes and their body language, and hear their answers, which is far more valuable than anything that you could ever put down on paper. It strikes me that if people can queue to go into a newsagent to buy a choc pop, they should be able to go to an appeal in order to get the benefits that they need.

Mr Luney: I agree with all of that. I mentioned earlier that the appeals service had written to just under 2,500 appellants, giving them options for how their cases could be progressed. Of those, 61% said that they would prefer a face-to-face oral hearing, 25% said that they would accept a paper hearing —.

Mr Frew: I will tell you why that is the case. It really is a no-win *[Inaudible]* situation, because they are still given the option to go to a physical hearing if they are not happy with a paper appeal. It is a no-brainer. Of course, you would want to send all your clients towards a paper appeal in the interim period, so that they would not be left behind or delayed. *[Inaudible]* comes back positive, or even if it is stalled, or they are given an award for an *[Inaudible]* period. It is a no-brainer to go down the paper route, but it is surely not a sufficient way to proceed.

Mr Luney: No, the key figure was that only 13% wanted to go down the videoconferencing route. That may be indicative of a lack of confidence in new technology. Therefore, we need to demonstrate that it is a robust, reliable system and that they will not be disadvantaged by using it. There is a piece of work to be done on communicating its benefits, but we —.

Mr Frew: Look at the actions of the Supreme Court, of all places, and the innovations that it has used. Surely, in this day and age, this is an opportunity for the Courts and Tribunals Service to innovate. This could be more of an opportunity than a hindrance in moving forward *[Inaudible]* those courts systems.

Mr Luney: It absolutely is. Indeed, we have done things over the past nine weeks that, under normal circumstances, would probably have taken a lot longer to achieve. We hope to build on that and mainstream some of those innovations.

Mr Frew: OK. Thank you, Peter.

Mr Luney: No problem.

The Chairperson (Mr Givan): OK. Sinéad or Jemma, do you have any questions?

Ms S Bradley: Yes. Thank you, Peter. I have two questions. I have never found a court building to be a suitable venue for benefits appeals. At the outset, it is suggestive that something is amiss, the applicant is put on the back foot before they start, and a lot of people will not take their right to appeal because of the venue and setting. I see an opportunity with that. Everybody should be able to make or receive an appeal sooner rather than later so that nobody is disadvantaged in any way in their entitlement, but this is an opportune moment to perhaps look at placing that body of work in a more appropriate venue or system of operation, perhaps through teleconferencing, with an advocate alongside the applicant. That could be, for example, the benefits applicant along with their representative. Citizens Advice should be singled out, as well as Advice NI, for being fabulous at that work. They could be resourced to have the applicant with them facing into live teleconferencing. I would like to think that that type of work is being considered. It would take a lot the pressures off the physicality of courts for other types of work, which, in my mind, they were originally set up to deal with.

While I am on the line, my second point is about new build and what courthouses and systems might look like. In the event of a case being heard where it was understood to be in the public interest that there would be a public gallery at that case, has consideration been given to live-streaming such cases from a public gallery perspective? Thank you.

Mr Luney: OK. On your first question, I have a slightly different view on the suitability of the court estate. I understand entirely the perception that you have articulated, but I look at the court estate as being used for a wide range of business, not just criminal business, which is what that perception is predicated on. We have vulnerable groups, and family and civil proceedings. A wide range of business is done in court buildings. In fact, there is a dedicated tribunal-hearing centre in the Royal Courts of Justice. There is a need to make sure that suitable parts of the court estate are used for tribunal cases, which are not austere or formal and lend themselves to an informal layout. We have some buildings that are capable of achieving that.

You raise a valid issue. As we move forward, there will be greater pressures on how we use the court estate because we may be unable to pack as much business in. It is conceivable that the focus on criminal business, which is the one part that probably most needs to be dealt with in formal court buildings, may begin to displace some of the capacity that we have for tribunals. To that end, we are working with the large number of the out centres that we use for tribunals to assess how many of them are capable of continuing in a socially distanced manner. We will also look to see whether there are options to increase that capacity, and we will, as you said, also need to see how we can make better use of technology, provided appellants are suitably supported through that process. It will be a very different model for tribunals, but I do not want to cut off any particular option.

In relation to public and media scrutiny of cases, we will again, as part of the current arrangements, see how we can stream proceedings to allow interested parties to view them. That has been particularly prominent in our planning work on jury trials. From what colleagues have done in other jurisdictions, we know that it is not uncommon now for a jury trial to take up three courtrooms: the jury and the parties are socially distanced and spread out in one courtroom; in a second courtroom, other witnesses, family members, interested parties and the media can watch the proceedings live-streamed; and a third courtroom or large room is set aside for jury members when they need to deliberate. We are focused on how we can make sure that people can still view proceedings. There is a legislative impediment to the broadcasting of courts, but we are very alive to the fact that we need to make sure that the people who need to view proceedings still have an opportunity to do so. That will cut across not just jury trials but all relevant court proceedings.

Ms Dillon: On the back of issues that have already been raised about tribunal hearings, one difficulty is that, although the couple of organisations that Sinéad mentioned are excellent in preparing cases, they are not excellent at accompanying individuals to hearings. That issue usually lands at our door or the door of community and voluntary organisations or non-stats, which end up having to pick up that end of things. My concern is that, while those organisations are really good at preparation, when individuals are asked to appear by videoconferencing, if they do not have a representative attending with them, they very often, perhaps due to the nature of their difficulties, whether with mental health, learning difficulties or physical impediments, will not be able to manage videoconferencing without help. Work is needed to find out why the uptake on videoconferencing is so low. It could work, particularly for people like me and other elected representatives who go to hearings. If I were doing that in my office, it could mean that it will take maybe only half a day at tribunals, which never run on time, and you could be sitting there for hours on end. I could continue to work in my office until the videoconferencing starts, which could be beneficial to an advocate. I am highlighting that, but advocates are not the priority. Appellants are the priority, but what allows them to have an advocate will be beneficial to them. Work needs to be done on that.

Sinéad asked about live-streaming from courts — you answered her question — and something came into my head. A courtroom is used for people to view court proceedings. I understand what you are saying about live-streaming not being broadcast publicly, but is there not a way to live-stream to another building rather than to a courtroom for people who want to view proceedings? That is not to take away from their importance. Is there not another way?

Mr Luney: There is. We have done that before in very specific circumstances. I remember one particularly high-profile case where we set up a room in the Headline Building, from where the family and interested parties viewed proceedings. That is possible, and rather than taking up valuable court space, that may well be part of the solution.

Ms Dillon: It is important that that work is done on tribunals. Like Sinéad, I understand what you are saying about court buildings being used for many matters other than just criminal cases. However, many appellants who are brought to those hearings have never put a foot inside a court, and their only knowledge of court is what they have seen on TV. It is very difficult to get past that in their own thinking.

I have one last question on family courts. Paul has already raised the issue. Have you noticed an increase in the number of families coming to court for COVID-19-related issues? A number of such issues have been brought to me. The Lord Chief Justice's guidelines set out that two households should behave as one where there is shared custody or access arrangements. However, one parent might say that there are symptoms in their home so that a child cannot go to the other parent. Has there been an increase in those types of cases?

Mr Luney: Some such cases have certainly come in. Legal representatives have done a lot of work with their clients to try to address some of those issues outside a court setting, and to try to broker a settlement. That is being used to good effect. I am aware anecdotally that, for families who are involved with social services, social workers are trying to address conflict around contact. Some cases have come in. When we look at the number of cases that have been received and disposed of against the number for the same period last year, we certainly see a reduction, but a considerable number of cases are still coming in. That flow is still coming through.

In relation to domestic violence, we had a query recently about whether there had been a substantial drop in the number of applications for non-molestation orders because of the perception that the courts were not accessible. However, when we pulled those numbers out, the figures were largely comparable with those for the same period last year.

The Chairperson (Mr Givan): OK. Any other members?

Mr Dunne: Are you making progress on the historical institutional abuse compensation scheme? Have the panels met?

Mr Luney: They have. The decision on whether to go live on that was for the First Minister and deputy First Minister. There were candid discussions about the practical constraints of doing so at a time of lockdown. However, there was a real desire for that system to go live and come on board.

We thought that, maybe in the early stages, we would be able to receive applications but not do an awful lot more with them. However, the president and panel members have worked with us really well and have been very receptive to the idea of meeting virtually to consider completed cases. That has been done. We have got to the point at which the panels have made a number of awards, either for interim or full payments, and those have now been processed to payment. In the circumstances, that has been a real result.

Mr Dunne: Good. Where is that based?

Mr Luney: The redress board sits in the Headline Building.

The Chairperson (Mr Givan): Peter, thank you very much for coming to the Committee. As always, it is much appreciated.

Mr Luney: No problem. Thank you.